

New Jersey Department of Environmental Protection
New Jersey Administrative Code
Title 7, Chapter 1E

APPENDIX B

FINANCIAL FORMS

Adopted: August 30, 2001
Effective: September 29, 2001

B.1 Letter from chief financial officer:

To support a financial test of self-insurance or a guarantee, the chief financial officer of the major facility or guarantor shall prepare and sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

(1) Non-government entities

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [name and address of the owner or operator, or guarantor]. This letter is in support of the use of ["the financial test of self-insurance" and/or "guarantee"] to demonstrate financial responsibility for cleanup and removal activities arising from operating [name(s) and address(es) of facility(ies)] in the amount of at least [dollar amount] per occurrence ["per facility" if multiple facilities are covered by this one document] and [dollar amount] annual aggregate ["per facility" if multiple facilities are covered by this one document].

A ["financial test" and/or "guarantee"] is also used by this ["owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under the following EPA or State rules or regulations (i.e. RCRA, ECRA, UST, etc.):

[applicable rules or regulations and amounts]

This ["owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of N.J.A.C. 7:1E-4.4(g)1 based on tangible net worth are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria based on bond rating or net working capital of N.J.A.C. 7:1E-4.4(g)2 are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

- | | | | |
|-----|--|-----|----|
| 1. | Amount of annual DCR aggregate coverage being assured by a financial test and/or guarantee | \$ | |
| 2. | Amount of annual aggregate coverage for all other federal or State regulatory costs (i.e. RCRA, ECRA, UST, etc.) covered by a financial test, and/or guarantee | \$ | |
| 3. | Sum of lines 1 and 2 | \$ | |
| 4. | Total tangible assets | \$ | |
| 5. | Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] | \$ | |
| 6. | Tangible net worth [subtract line 5 from line 4] | \$ | |
| | | YES | NO |
| 7. | Is line 6 at least \$10 million? | — | |
| 8. | Is line 6 at least 10 times line 3? | — | |
| 9. | Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? | — | |
| 10. | Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | — | |
| 11. | Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? | — | |
| 12. | Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met] | — | |

ALTERNATIVE II

- | | | |
|----|---|----|
| 1. | Amount of annual DCR aggregate coverage being assured by a financial test and/or guarantee | \$ |
| 2. | Amount of annual aggregate coverage for all other federal or State regulatory costs (i.e. RCRA ECRA, UST, etc.) covered by a financial test, and/or guarantee | \$ |

3.	Sum of lines 1 and 2	\$	
4.	Total tangible assets	\$	
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	\$	
6.	Tangible net worth [subtract line 5 from line 4]	\$	
7.	Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]	\$	
		YES	NO
8.	Is line 6 at least \$10 million?	_____	
9.	Is line 6 at least 6 times line 3?	_____	
10.	Are at least 90 percent of total assets located in the U.S.? [If "No", complete line 11.]	_____	
11.	Is line 7 at least 6 times line 3?	_____	
	[Fill in either lines 12-15 or lines 16-18:]		
12.	Current assets	\$	
13.	Current liabilities	\$	
14.	Net working capital [subtract line 13 from line 12]	\$	
		YES	NO
15.	Is line 14 at least 6 times line 3?	_____	
16.	Current bond rating of most recent bond issue		
17.	Name of rating service		
18.	Date of maturity of bond		
19.	Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?	_____	

[If "No", please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(2) Local government - bond rating test

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [name and address of local government owner or operator]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for cleanup and removal activities arising from operating [name(s) and address(es) of facility(ies)] in the amount of at least [dollar amount] per occurrence ["per facility" if multiple facilities are covered by this one document] and [dollar amount] annual aggregate ["per facility" if multiple facilities are covered by this one document]. [If applicable "This local government is not organized to provide general governmental services and does not have the legal authority under State law or constitutional provisions to issue general obligation debt."]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding ["revenue"] bond issues that are being used by [name of local government owner or operator] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding amount	Bond Rating	Rating Agency
				[Standard & Poor's or Moody's]

The total outstanding obligation of [amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding ["general obligation" or "revenue"] bonds issued by this government that have been rated by Standard and Poor's or Moody's are rated at least investment grade (Standard and Poor's BBB or Moody's Baa) based on the most recent ratings published within the last 12 months. ["The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company."] Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(3) Local government - financial test

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [name and address of local government owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for cleanup and removal activities arising from operating [name(s) and address(es) of facility(ies)] in the amount of at least [dollar amount] per occurrence ["per facility" if multiple facilities are covered by this one document] and [dollar amount] annual aggregate ["per facility" if multiple facilities are covered by this one document].

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Standard and Poor's rating of AAA, AA, A or BBB or a Moody's rating of Aaa, Aa, A or Baa; if rated by both firms, the bonds have a Standard and Poor's rating of AAA, AA, A or BBB or a Moody's rating of Aaa, Aa, A or Baa.

Worksheet for Municipal Financial Test

Part 1: Basic Information

1. Total Revenues

a. Revenue (dollars)

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general operating and non-operating revenues as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)

c. Total Revenues (dollars)

2. Total Expenditures

a. Expenditures (dollars)

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars)

c. Total Expenditures (dollars)

3. Local Revenues

a. Total Revenues (from 1c) (dollars)

b. Subtract total intergovernmental transfers (dollars)

c. Local Revenues (dollars)

4. Debt Service

a. Interest and fiscal charges (dollars)

b. Add debt retirement (dollars)

c. Total Debt Service (dollars)

5. Total Funds (Dollars)

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (Persons)

Part II: Application of Test

7. Total Revenues to Population

a. Total Revenues (from 1c)

b. Population (from 6)

c. Divide 7a by 7b

d. Subtract 417

e. Divide by 5,212

f. Multiple by 4.095

8. Total Expenses to Population

a. Total Expenses (from 2c)

b. Population (from 6)

c. Divide 8a by 8b

d. Subtract 524

e. Divide by 5,401

f. Multiple by 4.095

9. Local Revenues to Total Revenues

a. Local Revenues (from 3c)

b. Total Revenues (from 1c)

c. Divide 9a by 9b

d. Subtract 0.695

e. Divide by 0.205

f. Multiple by 2.840

10. Debt Service to Population

a. Debt Service (from 4d)

b. Population (from 6)

c. Divide 10a by 10b

d. Subtract 51

e. Divide by 1,038

f. Multiple by -1.866

11. Debt Service to Total Revenues

a. Debt Service (from 4d)

b. Total Revenues (from 1c)

c. Divide 11a by 11b

- d. Subtract 0.068
- e. Divide by 0.259
- f. Multiple by -3.533

12. Total Revenues to Total Expenses

- a. Total Revenues (from 1c)
- b. Total Expenses (from 2c)
- c. Divide 12a by 12b
- d. Subtract 0.910
- e. Divide by 0.899
- f. Multiple by 3.458

13. Funds Balance to Total Revenues

- a. Total Funds (from 5)
- b. Total Revenues (from 1c)
- c. Divide 13a by 13b
- d. Subtract 0.891
- e. Divide by 9.156
- f. Multiple by 3.270

14. Funds Balance to Total Expenses

- a. Total Funds (from 5)
- b. Total Expenses (from 2c)
- c. Divide 14a by 14b
- d. Subtract 0.866
- e. Divide by 6.409
- f. Multiple by 3.270

15. Total Funds to Population

- a. Total Funds (from 5)
- b. Population (from 6)
- c. Divide 15a by 15b
- d. Subtract 270
- e. Divide by 4,548
- f. Multiple by 1.866

16. Add $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

B.2 Guarantee:

The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of [name of state], herein referred to as guarantor, to the Department and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

(1) Guarantor meets or exceeds the financial test criteria of N.J.A.C. 7:1E-4.4(g) and agrees to comply with the requirements for guarantors as specified in N.J.A.C. 7:1E-4.4(h).

(2) This guarantee satisfies the requirements for assuring funding in the amount of [dollar amount] per occurrence and [dollar amount] annual aggregate for cleanup and removal activities arising from operating the above identified major facility.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the

owner or substantial business relationship with owner or operator); "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a discharge has occurred at a facility covered by this guarantee, the guarantor, upon instructions from the Department, shall fund a standby trust fund in an amount sufficient to cover cleanup and removal costs, but not to exceed the coverage limits specified in N.J.A.C. 7:1E-4.4(b).

In the event that the Department determines that [owner or operator] has failed to perform cleanup and removal activities arising out of the operation of the above-identified facility, the guarantor, upon written instructions from the Department, shall fund a standby trust in an amount sufficient to cover cleanup and removal costs, but not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of N.J.A.C. 7:1E-4.4(g), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator] and the Department. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator] or 120 days from the date of receipt of the notice by the Department, whichever is later, as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alternation of any obligation of [owner or operator] pursuant to N.J.A.C. 7:1E.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of N.J.A.C. 7:1E-4.4 for the above-identified facility, except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator] and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator];

(c) Bodily injury or property damage not related to a discharge arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a discharge from the facility;

(e) Bodily damage or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of N.J.A.C. 7:1E-4.4.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix B of N.J.A.C. 7:1E as such rules were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

B.3 Insurance or risk retention group:

Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

NAME: _____ [name of each covered location]

ADDRESS: _____ [address of each covered location]

POLICY NUMBER:

PERIOD OF COVERAGE _____ [current policy period]

NAME OF [INSURER OR RISK RETENTION GROUP]:

ADDRESS OF [INSURER OR RISK RETENTION GROUP]:

NAME OF INSURED:

ADDRESS OF INSURED:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance, subject to public policy considerations, covering the following facility(ies): [location name(s) and address(es) of each covered facility] for cleanup and removal activities.

The limits of liability are [insert the dollar amount of the "per occurrence" and "annual aggregate" limits of the Insurer's or Group's liability for each facility covered], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of cleanup and removal activities, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms.

c. Whenever requested by the Department, ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or material misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after the date on which the insured receives the written notice or 60 days after the date on which the Department receives the written notice, whichever is later. Cancellation for nonpayment of premium or material misrepresentation by the insured will be effective only upon written notice and only after the expiration of a minimum of 10 days after the date on which the insured receives the written notice or 10 days after the date on which the Department receives the written notice, whichever is later.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or nonrenewal of the policy, except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and that arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix B of N.J.A.C. 7:1E and that the ["Insurer" or "Group"] is [Insert appropriate phrase: "licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer in New Jersey".]

[Signature of authorized representative of Insurer or Risk Retention Group]
[Name of person signing]
[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(2) CERTIFICATE OF INSURANCE

NAME: _____ [name of each covered location]

ADDRESS: _____ [address of each covered location]

POLICY NUMBER:

ENDORSEMENT (if applicable):

PERIOD OF COVERAGE _____ [current policy period]

NAME OF [INSURER OR RISK RETENTION GROUP]:

ADDRESS OF [INSURER OR RISK RETENTION GROUP]:

NAME OF INSURED:

ADDRESS OF INSURED:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance, subject to public policy considerations, covering the following facility: [List the name(s) and address(es) of each covered facility] for cleanup and removal activities arising from operating the facility(ies) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability for each covered facility], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of cleanup and removal activities, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms.

c. Whenever requested by the Department, the [Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or material misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after the date on which the insured receives the written notice or 60 days after the date on which the Department receives the written notice, whichever is later. Cancellation for nonpayment of premium or material misrepresentation by the insured will be effective only upon written notice and only after the expiration of a minimum of 10 days after the date on which the insured receives the written notice or 10 days after the date on which the Department receives the written notice, whichever is later.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or nonrenewal of the policy, except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and that arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix B of N.J.A.C. 7:1E and that the ["Insurer" or "Group"] is [Insert appropriate phrase: "licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer in the State"].

[Signature of authorized representative of Insurer or Risk Retention Group]
[Type name]
[Title], Authorized Representative of [name Insurer or Risk Retention Group]
[Address of Representative]

B.4 Surety Bond:

The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

DATE BOND EXECUTED:

PERIOD OF COVERAGE:

PRINCIPAL: [legal name and business address of owner or operator]

TYPE OF ORGANIZATION: [insert "individual," "joint venture," "partnership," or "corporation"]

STATE OF INCORPORATION (If Applicable):

SURETY(IES): [names(s) and business address(es)]

SCOPE OF COVERAGE: [List the name and address of the facility. List the coverage guaranteed by the bond: cleanup and removal activities.]

PENAL SUMS OF BOND: Per occurrence \$
Annual aggregate \$

SURETY'S BOND NUMBER:

Know all Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under N.J.S.A. 58:10-23.11 to provide financial assurance for cleanup and removal activities arising from operating the facility identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully perform cleanup and removal activities arising from operating the facility identified above, or if the Principal shall provide alternate financial assurance within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator];
- (c) Bodily injury or property damage not related to a discharge arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a discharge from the facility;
- (e) Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of N.J.A.C. 7:1E-4.5.

Upon notification by the Department that the Principal has failed to perform cleanup and removal activities in accordance with the Department's instructions, as guaranteed by this bond, the Surety(ies) shall either perform cleanup and removal activities in accordance with the Department's instructions, or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Department has determined or suspects that a discharge has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Department.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

B.5 Letter of Credit:

The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of the Department]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$ [dollar amount]), available upon presentation of:

- (1) your sight draft, bearing reference to this letter of credit, No. _____, and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to rules issued under authority of the Spill Compensation and Control Act, and that this letter of credit is not being drawn on to cover any of the following:
 - (a) Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
 - (b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator];
 - (c) Bodily injury or property damage not related to a discharge arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
 - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a discharge from the facility;
 - (e) Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of N.J.A.C. 7:1E-4.4."

This letter of credit may be drawn on to cover cleanup and removal activities arising from operating the facility identified below in the amount of [in words] \$ [dollar amount] per occurrence and [in words] \$ [dollar amount] annual aggregate.

[name and address of facility]

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current

expiration date, we notify [owner or operator] and the Department by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator] or for 120 days after the date of receipt by the Department, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to ["the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].